

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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|--|----------|--------------------|---------------------------|
| Tri-State Generation and Transmission |) | Docket Nos. | ER19-2440-000 |
| Association, Inc |) | | ER19-2444-000 |
| |) | | ER19-2444-001 |
| | | | (not consolidated) |

PROTEST OF SAN MIGUEL POWER ASSOCIATION, INC.

Richard L. Roberts
Laura V. Swett
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-6756
rroberts@steptoe.com
lswett@steptoe.com

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Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.211 (2018), San Miguel Power Association, Inc. (“SMPA”) hereby files this Protest in the above-referenced dockets. In Docket No. ER19-2444, Tri-State Generation and Transmission Association, Inc. (“Tri-State”), a Generation and Transmission association that is currently exempt from Commission jurisdiction under the Federal Power Act (“FPA”),¹ filed 43 separate rate schedules comprised of existing long-term wholesale electric service contracts (“WESCs”) between Tri-State and each of its 43 members.² In Docket No. ER19-2440, Tri-State separately filed a Stated Rate Tariff with the intent that the tariff would set the cost of service rate that members will pay under their WESCs/rate

¹ 16 U.S.C. § 824(f) (2012).

² Tri-State Generation and Transmission Association, Inc. Initial Filing of Rate Schedules FERC No. 1 through No. 43 (Wholesale Electric Service Contracts), Docket No. ER19-2444 (July 23, 2019, *amended* July 26, 2019) (“WESC Filing”).

schedules.³ SMPA is a long-time member and customer of Tri-State, and because Tri-State filed SMPA's WESC as Rate Schedule FERC No. 31, SMPA herein seeks to preserve the value of its membership by ensuring that the rate filings are complete and the terms and conditions of membership and service are therefore certain.

As discussed below, the Commission should condition any approval of Tri-State's filings on the requirement that Tri-State file certain necessary but absent documents. As it stands, Tri-State's filings: (1) are incomplete; (2) are inconsistent with Commission precedent, the FPA, and the Public Utility Regulatory Policies Act of 1978 ("PURPA");⁴ and (3) consist of contracts that are materially inconsistent with their own terms and violate Colorado law.

I. BACKGROUND

SMPA is a member-owned, locally-controlled rural electric cooperative that serves seven counties in western Colorado. SMPA is not a "public utility" as defined by Section 201 of the FPA, 16 U.S.C. § 824(e) (2012). Established in 1938, with a principal place of business at 170 W. 10th Ave., Nucla, Colorado, 81424, SMPA serves local communities in its territory that covers approximately 3,600 square miles, 9,600 members, and 14,000 meters.

If the Commission accepts Tri-State's Stated Rate Tariff (Docket No. ER19-2440) and Rate Schedule FERC No. 31 containing SMPA's WESC (Docket No. ER19-2444),

³ Tri-State Generation and Transmission Association, Inc. Initial Rate Filing of FERC Electric Tariff Volume No. 1, Docket No. ER19-2440 (July 23, 2019) ("Stated Rate Filing").

⁴ 16 U.S.C. § 824a-3 (2012).

SMPA will be obligated to pay the rate for full requirements service that Tri-State filed in its Stated Rate Tariff. As such, Tri-State's decision to become a public utility regulated under the FPA has many potential and yet unexplored implications for SMPA's customers.

II. SUMMARY OF PROTEST

In the Commission's initial examination under the FPA, it must carefully review Tri-State's filings because they include contracts whose negotiation, execution, terms, rates, and conditions never contemplated FERC jurisdiction, application of the FPA, or its just and reasonable standard.⁵

First, SMPA respectfully requests that the Commission condition any approval of Tri-State's rates on Tri-State filing additional necessary but missing documents because the filings are currently incomplete.⁶ Tri-State's filings did not include key terms and conditions of service that are set forth in Tri-State's Articles of Incorporation and Bylaws ("Bylaws") and certain Tri-State Board of Director Policies. Specifically, Tri-State did not file the Bylaws or Board of Directors Policy ("Board Policy") No. 101, Board Policy No. 316, or Board Policy No. 406 as attachments to its rate schedules or Stated Rate

⁵ FPA Section 205(c), 16 U.S.C. 824d(c) (2012).

⁶ *E.g., Dominion Energy Mktg., Inc.*, 155 FERC ¶ 61,121 at P 21 n.31 (2016) (citing *Boston Edison Co.*, 98 FERC ¶ 61,292 at P 21 (2002) ("The Commission . . . has an interest in ensuring that tariffs clearly, completely and unambiguously identify services, rates and terms and conditions. The Commission thus frequently rejects proposed tariff language as unclear.")).

Tariff,⁷ despite the fact that the documents significantly affect their rates, terms, and conditions of service.

Second, SMPA requests that the Commission condition approval of Tri-State's filings upon their revision to meet the "just and reasonable" requirements of FPA Section 205; acceptance of the filings as submitted will create bad policy. The WESCs that Tri-State filed as rate schedules (and the associated unfiled material policies) are inconsistent with Commission precedent, the FPA, and PURPA because they cap member distributed and renewable generation at 5 percent. Also, the rate schedules consist of contracts that are materially inconsistent with their own terms and that violate Colorado law.

III. THE COMMISSION SHOULD FIND THAT THE RATE SCHEDULES AND TARIFF FILINGS ARE INCOMPLETE DUE TO TRI-STATE'S FAILURE TO FILE SIGNIFICANT CONTRACT TERMS, AND CONDITION ANY APPROVAL UPON TRI-STATE FILING THE NECESSARY DOCUMENTS

Tri-State's filing does not meet the requirements of the FPA because it is incomplete due to omission of the Tri-State Bylaws and certain Board Policies, which directly affect the terms of wholesale service under all 43 WESCs. Requiring Tri-State to refile rate schedules FERC No. 1 through 43, with the relevant Board Policies and Bylaws attached, also is appropriate because under FERC precedent any unfiled provisions that conflict with the filed rate could be deemed unenforceable. These provisions must be filed and meet the just and reasonable standard. To the extent the Bylaws and Board Policies are found to be just and reasonable, Tri-State or its members

⁷ The missing Bylaws and Board Policies are attached to this Protest as Attachments A, B, C, and D.

should not be permitted to avoid compliance with these documents because they are unfiled, as they are inextricably linked to the WESCs.

A. Tri-State Has Not Met the Requirements of the FPA

FPA Section 205(c) requires public utilities to file “schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.”⁸ The Commission regularly holds that this provision requires that “anything affecting the rates, terms, and conditions of jurisdictional services are subject to the Commission’s review” under section 205(c) of the FPA, and must be included in filed rates.⁹ This precedent includes Bylaws because they “affect or relate to” services provided by public utilities.¹⁰

Tri-State’s filing fails to meet this standard because it is missing essential documents.

1. A Rate Filing Must Be Complete

Whether a utility files a rate schedule or tariff, the filing must be complete so that the Commission is able to assess whether it is just and reasonable.

⁸ 16 U.S.C. § 824d(c).

⁹ *E.g., Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076 at P 656 (2007).

¹⁰ *See, e.g., Demand Response Coal. v. PJM Interconnection L.L.C.*, 143 FERC ¶ 61,061 at P 17 (2013); *W. Sys. Coordinating Council*, 96 FERC ¶ 61,348 at 62,294 (2001) (“[B]ecause the Bylaws of the WECC will affect or relate to transmission services provided by public utilities, consistent with our action in WRTA and SWRTA, we will review the reasonableness of the Bylaws of the WECC under section 205 and require WECC to timely file any changes to that agreement for Commission approval.”).

The FPA and 18 C.F.R. § 35.1 require that rate schedule filings are full and complete, and set forth the classifications, practices, rules and regulations affecting such rates for Commission review.¹¹ In *Portland General*, the Commission held that a party's proposal to place procedural provisions that impacted a jurisdictional agreement in an unfiled business practice was "contrary to the Commission's policy of requiring that 'all practices that significantly affect rates, terms and conditions' of jurisdictional service be 'included in a tariff filed with the Commission.'"¹² The Commission directed the parties (who, like Tri-State, filed an agreement that operated in conjunction with a tariff) to revise their filing to include terms and conditions contained in the business practices that related to requests and dispute resolution procedures:

[W]e cannot make a final determination until the terms and conditions affecting such service over the Transmission System are incorporated into the [Agreement]. We therefore will direct the Owners to submit a further compliance filing . . . to include in the [Agreement] information currently contained in the [Business Practice] clarifying the procedures and processes for considering third party requests over the Transmission System In addition, we will direct the Owners to further revise the [Agreement] to incorporate the terms and conditions of the [Business Practice] addressing third party requests . . . into the [Agreement] and the processing of such requests and the dispute resolution procedures.¹³

In other words, the Commission cannot make a final determination regarding unfiled provisions until the relevant terms and conditions are incorporated into the rate

¹¹ 18 C.F.R. § 35.1(a) (2018) ("as required by section 205(c) of the Federal Power Act (49 Stat. 851; 16 U.S.C. 824d(c))").

¹² *Portland Gen. Elec. Co.*, 144 FERC ¶ 61,087 at P 25 (2013).

¹³ *Id.* at P 27.

schedule at issue.¹⁴

Likewise, tariff filings are incomplete unless they include terms and conditions from secondary documents such as business practice manuals or operating procedures that significantly affect filed rates, terms, and conditions. The Commission has held that FPA Section 205 necessitates tariff filings to include practices that govern the fundamental duties and obligations of the parties,¹⁵ as well as those that impact data related to money allocation.¹⁶ Further, terms referenced in a tariff should be included in the tariff to ensure clarity and consistent application.¹⁷

As demonstrated below, the Tri-State Bylaws and certain Board Policies significantly affect the rates, terms, and conditions of the 43 WESCs Tri-State filed as Rate Schedule FERC Nos. 1-43.

¹⁴ *Id.*

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 98 FERC ¶ 61,137 at 61,401 (2002) (“The proposed Operating Protocols purport to govern fundamental duties of the Midwest ISO and the related obligations of Generators. It appears that the proposed Operating Protocols could significantly affect certain rates and services and as such are required to be filed pursuant to Section 205.”).

¹⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,038 at PP 9-11 (2011) (finding that procedures contained in business practice manuals that affected rates and money allocation must be set forth in the Tariff rather than referenced).

¹⁷ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 at P 80 (2016) (“[T]hree key offer parameters . . . are not currently defined in the Tariff and Operating Agreement, despite being referenced in numerous locations within the Tariff and Operating Agreement and being subject to several limitations as part of PJM's proposal. . . . Providing these definitions more formally in the Tariff and Operating Agreement will benefit market participants by ensuring clarity and consistent application . . .”).

2. The Commission Must Review Secondary Documents to Confirm Consistency with the Filed Rate

A complete filing also must include the terms of secondary documents—i.e., bylaws and board policies—that are material to the filed tariff or rate schedule because the Commission may not enforce the terms of secondary documents that are inconsistent with a filed tariff or rate schedule. “Commission precedent has long held that when a conflict exists between a filed tariff and an unfiled business practice manual, the tariff governs.”¹⁸ Additionally, the Commission has stated on numerous occasions that “a company’s tariffs, not its manuals or handbooks, must define the rates, terms and conditions of jurisdictional services.”¹⁹ For this additional reason, Tri-State must file its Bylaws and certain Board Policies that contain essential terms and conditions of service, so that the Commission may ensure consistency with the other terms of the WESCs and that they are just and reasonable. Tri-State’s failure to file the Bylaws and Board Policies may make them ineffective, leaving a vacuum of uncertainty as to what the parties’ rights are under the Rate Schedules.

¹⁸ *Cal. Indep. Sys. Operator Corp.*, 154 FERC ¶ 61,122 at P 16 (2016) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,113 at P 47 (2006) (“The filed and accepted tariff is the governing document and not the Business Practice Manuals – the former has precedence over the latter and not the other way around.”)).

¹⁹ *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,114 at P 55 n.73 (2019) (quoting *Quest Energy, LLC v. The Detroit Edison Co.*, 106 FERC ¶ 61,227 at P 20 (2004) (citing *Atl. City Elec. Co. v. PJM Interconnection, L.L.C.*, 91 FERC ¶ 61,063 at 61,219-20 (2000))).

B. To Satisfy the FPA, Tri-State Must File Its Articles of Incorporation and Bylaws, and Certain Board Policies

The terms of SMPA's (and every other Tri-State member's) WESC will be unclear and incomplete in violation of the FPA unless Tri-State files and the Commission rules on the Tri-State Bylaws and Board Policies.

1. Tri-State's Filing Is Incomplete without the Bylaws

Tri-State must file its Articles of Incorporation and Bylaws because they set forth the classifications, practices, rules, and regulations affecting rates for Commission review.²⁰ To put a finer point on it, the WESCs/Rate Schedules dictate that the parties' rights are in part determined by the bylaws. For example, SMPA's WESC/Rate Schedule FERC No. 31 contains the following provision:

Every right and remedy shall be cumulative and in addition to every right or remedy now or hereafter existing at law, in equity, *under Seller's bylaws* or by statute or contract between the Parties and the pursuit or granting of any right or remedy shall not be construed as an election. Nothing in this Contract shall be construed to limit or restrict the rights and obligations of either of the Parties [a] *under Seller's bylaws*²¹

The fact alone that the Rate Schedules explicitly dictate that the bylaws determine the parties' rights, remedies, and obligations under the WESCs is reason enough for the Commission to require their filing.

²⁰ 18 C.F.R. § 35.1(a) ("as required by section 205(c) of the Federal Power Act (49 Stat. 851; 16 U.S.C. 824d(c)").

²¹ Rate Schedule FERC No. 31, SMPA, 1.0.0, § 11.3 (emphasis added) ("Rate Schedule FERC No. 31").

What’s more, examination of the Bylaws reveals that they are essential to defining not only Tri-State itself (Article VII – Operation as a Cooperative Corporation), but also the relationship between and liabilities of Tri-State and its members (Article I – Membership, Article II – Rights and Liabilities of Members), but also the terms of the organization’s governance (Article III – Meetings of Members), officers (Article VI – Officers), and Board of Directors (Article IV – Directors, Article V – Meetings of Directors).²² Markedly, Article I contains provisions defining the conditions of applying for and joining Tri-State, the Board’s ability to add new membership classes (particularly relevant to the “New Member” referenced throughout Tri-State’s filings), the terms of members’ required purchases from Tri-State under their WESCs, and member withdrawal, expulsion, and termination. Simply put, these provisions are material to the rates, terms, and conditions of Tri-State’s proposed rates and the Commission must review them.²³

²² See Tri-State Articles of Incorporation and Bylaws (Attachment A).

²³ Regarding withdrawal terms, Article I, Section 4, “Withdrawal, Expulsion, Termination and Reinstatement of Membership” provides that the Board shall assess what equates to an exit fee for withdrawing members:

(c) The Board of Directors shall have authority to prescribe equitable terms and conditions to be applied when a member withdraws from membership, ceases existence, or is expelled from membership, and such may be done by policy or otherwise

Exit fees are material to rates, conditions, and terms of services, thus the Commission reviews them to determine whether they are just and reasonable. See *Am. Wind Energy Ass’n v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033 at P 49 (2019) (“We direct SPP to revise its governing documents to eliminate the membership exit fee for non-transmission owners and find that doing so will result in rates that are just and reasonable.”).

The Bylaws are not only significant on their own because they define essential terms related to the WESCs, but also because they govern the Board of Directors, whose unilateral action establishes the rates that Tri-State proposes to charge. As Tri-State acknowledges in both its Stated Rate and WESC filings: “Tri-State is controlled by a 43 seat Board of Directors” that has “significant control over the activities of Tri-State, and the rates it charges to its Members.”²⁴ “Tri-State’s Member rates currently are determined by its 43-Member Board of Directors. Tri-State’s Board currently reviews the rates for sales to Members once each calendar year, as a part of its annual budget process.”²⁵

The Board’s ability to set rates (and thus its actions) are particularly important in the context of the WESCs because it is ambiguous what rate would apply if the Commission accepts the WESCs and not the Stated Rate Tariff. Though Tri-State claims in the Stated Rate Filing that the Stated Rate Tariff “tells the Member how much it must pay,”²⁶ the WESCs do not contemplate or mention the FERC stated rate. (This was highly unlikely, as the parties executed the contracts in 2007 when there was no possibility of FERC jurisdiction.) If the Commission accepts the WESCs and not the Stated Rate Tariff, it is possible that the Board, and not the Commission, would continue to set WESC rates. In such case, it is crucial that all parties, including the Commission,

²⁴ Stated Rate Filing at 3; WESC Filing at 3.

²⁵ Stated Rate Filing at 3; WESC Filing at 3.

²⁶ WESC Filing at 7.

understand the Board of Directors' powers and governance as they are currently defined by the yet unfiled Bylaws.

Finally, Tri-State must file the Bylaws because they are directly referenced by the tariff that Tri-State filed in Docket No. ER19-2440.²⁷ As noted above, the Commission has recognized that terms referenced in a tariff should be included in the tariff to ensure clarity and consistent application.²⁸

There is no question that party rights, remedies, and obligations under the WESCs “‘significantly affect rates, terms and conditions’ of jurisdictional service” under the Tariff and Rate Schedules.²⁹ Yet, Tri-State did not file the Bylaws that define those rights, remedies, and obligations. The Commission must require Tri-State to file the Bylaws to ensure that the filings are complete, to ensure that there is no confusion as to the parties' rights and obligations, and to ensure that the Bylaws do not conflict with the filed documents and are enforceable/just and reasonable.

2. Tri-State's Filing is Incomplete without Certain Board Policies

Tri-State must file the following Board Policies that have direct implications for rates, terms, and conditions of proposed jurisdictional service: (1) the Qualifying Facility

²⁷ Stated Rate Filing, FERC Electric Tariff Original Volume No. 1, Executive Summary at 5 (Allocation and retirement of patronage capital “shall be according to the Bylaws.”).

²⁸ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 at P 80 (“[T]hree key offer parameters . . . are not currently defined in the Tariff and Operating Agreement, despite being referenced in numerous locations within the Tariff and Operating Agreement and being subject to several limitations as part of PJM's proposal. . . . Providing these definitions more formally in the Tariff and Operating Agreement will benefit market participants by ensuring clarity and consistent application . . .”).

²⁹ *Portland General*, 144 FERC ¶ 61,087 at P 25.

(“QF”) capacity and energy purchase policy in Board Policy No. 101; (2) the provisions in Board Policy No. 316 setting forth the non-rate dispute resolution process for Tri-State and its members; and (3) the policies regarding requests for information from Tri-State in Board Policy No. 406 (referenced in Tri-State’s filing but not included) (under which the Board may decline to provide information to members who seek to dispute findings by the Rate Design Committee, per Board Policy No. 315). Tri-State also must file its Board Policies because the WESCs directly mention written policies that the Board will ascribe and which Tri-State did not file.³⁰

Tri-State’s failure to file certain Board Policies suffers from the same flaw as its failure to file the Bylaws; the Rate Schedules/WESCs provide that the Board establishes the rates, terms, and conditions that members must pay.³¹ Therefore, the Board Policies discussed below define essential terms for the service that Tri-State proposes to provide under Commission jurisdiction. As the Commission noted in *Portland General*, it cannot make a final determination until the terms and conditions contained in the Bylaws that affect service over the WESCs are incorporated into Tri-State’s filings.³²

³⁰ See, e.g., Rate Schedule FERC No. 31, § (1)(a) (“Details concerning the operating requirements of the election shall be set forth in a written policy to be adopted by Seller’s Board of Directors which shall set forth requirements”); *id.* § 5 (“The Seller’s Board of Directors shall establish a written policy concerning notice of meter testing”).

³¹ See, e.g., *id.* § 3(a), Rate (“The Member shall pay the Seller for all electric service furnished hereunder at the rates and on the terms and conditions set forth in the rate schedule(s), adopted from time to time by Seller’s Board of Directors.”). See also *id.* at § 3(b) (obligating member to pay rates as the Board annually revises).

³² *Portland General*, 144 FERC ¶ 61,087 at P 27.

a. Board Policy No. 101

Tri-State did not file Board Policy No. 101 in either its WESC Filing or Stated Rate Filing, but it must because the policy defines essential terms of what may become jurisdictional service. The policy defines the parties' rights to purchase capacity and energy from QFs as required by PURPA,³³ and the method by which Tri-State calculates the price for QF capacity and energy, including what amounts to a monetary penalty for purchases over 5 percent of a member's requirements.³⁴ The Policy also, among other things, contains a provision regarding the rights of Tri-State or a member to apply to the Commission for waiver of Tri-State's obligation to sell retail power to QFs and members' obligations to purchase capacity and/or energy from QFs.³⁵

The ability of Board Policy No. 101 to impact rates under the filed tariff and WESCs is apparent from Tri-State's Stated Rate and WESC filings, wherein Tri-State lists QF bill credits in its 2019 base budget operating income.³⁶ Further, per Tri-State's

³³ See 16 U.S.C. § 824a-3.

³⁴ Board Policy No. 101 at 1 (“[T]he price for capacity and energy for QFs shall be calculated annually by Tri-State through system production cost modeling of the Tri-State generation fleet, and will be used for the following calendar year. The results of the avoided cost calculations will be made available to developers of QFs upon request. This modeling will involve hourly chronological production cost methods to determine the hourly decremental cost of the Tri-State generation fleet.”); *id.* at 2 (“In the event a Member System purchases capacity and/or energy from a QF pursuant to 18 C.F.R. section 292 . . . and that purchase results in the Member System purchasing less than 95% of its requirements from Tri-State . . . then Tri-State will bill that member System an amount equal to Tri-State's lost revenue minus Tri-State's avoided cost that is associated with the Member System purchasing less than 95% of its requirements from Tri-State.”).

³⁵ *Id.* at 2-3.

³⁶ See, e.g., Stated Rate Filing at PDF p.82, Tri-State Member System Operating Statement, Base Budget Final 2019, line 5, Policy 115 & Other QF Bill Credits; WESC Filing at PDF p.20 (same).

own documents, Board Policy No. 101 goes hand-in-hand with Board Policy 115, “Member System Distributed Generation Policy,” which Tri-State *did* file.³⁷ The significance of this Board Policy to Tri-State members is apparent through prior FERC litigation regarding the obligations of members under their WESCs as it pertains to PURPA (discussed more below, in section IV.A.³⁸ Remarkably, the current 2018 revision of Board Policy No. 101 is inconsistent with prior Commission orders that found that the policy “seeks to undermine” a prior Commission order by imposing financial burdens that limit members from purchasing from QFs above Tri-State’s 5 percent contract and policy limitation.³⁹

The Commission must require Tri-State to file Board Policy No. 101 because its absence renders the submission incomplete and devoid of essential terms affecting the rates, terms, and conditions of service. Admittedly, the policy is particularly important to SMPA, who of its own volition and under Colorado law desires to employ more renewable resources than currently permitted by its WESC. Tri-State must also submit the policy for Commission review to ensure that it complies with the Commission’s prior orders, PURPA policy, and the FPA.

³⁷ See, e.g., WESC Filing at PDF p.22, Tri-State Member Revenue Summary, lines 17, 19, 20, Policy 115 & Other QF; *id.* at PDF p.36, Policy 115 and Other QF.

³⁸ *Delta-Montrose Elec. Ass’n*, 151 FERC ¶ 61,238 at P 1 (finding that Delta-Montrose’s obligation to purchase power from QFs under PURPA “supersedes any conflicting provisions” in Delta-Montrose’s WESC), *reh’g denied*, 153 FERC ¶ 61,028 (2015) (Tri-State member Kit Carson request for clarification or rehearing).

³⁹ See *Tri-State Generation and Transmission Ass’n, Inc.*, 155 FERC ¶ 61,269 at P 19 (2016).

b. Board Policy No. 316

Commission precedent requires Tri-State to also file Board Policy No. 316 because it sets forth Tri-State’s “Non-Rate Dispute Resolution Policy.” This policy memorializes the three-step complaint and review process by which any member who challenges a non-rate issue must comply,⁴⁰ and serves as the only recourse available to a member who has *any* complaint that is unrelated to a change in rate or rate design, including membership application, withdrawal, and exit fees. As an organization with 43 members who hold diverse and potentially conflicting interests, and who are potentially dealing with Commission jurisdiction for the first time, Tri-State’s non-rate dispute resolution process is critical to ensuring that its members have a forum for appeal.

As previously noted, in *Portland General*, the Commission held in part that it could not make a final determination regarding the justness and reasonableness of a filed agreement until the parties supplemented that agreement with unfiled non-rate dispute resolution procedures.⁴¹ Not only is Board Policy No. 316 absent from Tri-State’s filings, the filings lack any type of dispute resolution or arbitration procedures for members who may take issue with Tri-State non-rate actions. Unless Tri-State is made to file Board Policy No. 316 or some alternative for Commission review, an impermissible gap will exist.⁴²

⁴⁰ Board Policy No. 316, “Non-Rate Dispute Resolution Policy” (revised September 6, 2018).

⁴¹ See *Portland General*, 144 FERC ¶ 61,087 at P 27.

⁴² See *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 at P 18 (2013) (requiring formula rate protocols to afford parties the opportunity to engage in a “well-defined informal challenge process”). This case is informative because, although Tri-State

c. Board Policy No. 406

Tri-State also must file Board Policy No. 406,⁴³ which is referenced by materials that Tri-State filed in Docket No. ER19-4440. In that docket, Tri-State filed Board Policy No. 315, which sets forth Tri-State's rate design process policy. Board Policy 315 provides that a member may request information considered by the rate design committee, provided however, that the rate design committee may decline to provide confidential information in accordance with Board Policy No. 406. In turn, Board Policy No. 406 governs the process whereby Tri-State considers such requests for information, including their rejection. In short, Tri-State may deny a member request for rate design information on the grounds of procedure established in Board Policy No. 406, which is unfiled. Unless Tri-State files Board Policy No. 406, Tri-State can deny, without recourse, a request for information from a member who seeks to challenge a rate set by the rate design committee. And such denial may inhibit a member's ability to substantively challenge a rate. Further, as previously discussed, terms referenced in a tariff should be included in the tariff to ensure clarity and consistent application.⁴⁴

submitted what it calls a "stated" and not a formula rate, the proposed rate is not "stated" because it allows Tri-State to unilaterally set rates without Commission review. *See, e.g.*, Stated Rate Filing at PDF p.28, Tri-State Electric Tariff Vol. 1 at 12 (stating that the REC rates "will be determined by Tri-State on an annual basis and the Member System will be notified in writing").

⁴³ Board Policy No. 406 (as revised March 6, 2019).

⁴⁴ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 at P 80 ("[T]hree key offer parameters . . . are not currently defined in the Tariff and Operating Agreement, despite being referenced in numerous locations within the Tariff and Operating Agreement and being subject to several limitations as part of PJM's proposal. . . . Providing these definitions more formally in the Tariff and Operating Agreement will benefit market participants by ensuring clarity and consistent application . . .).

At bottom, the Commission should condition any approval of Tri-State's Section 205 filing on Tri-State's filing the Bylaws and Board Policies for review. Tri-State and its members must know their rights and obligations, which are unclear unless all relevant documents are filed and approved by the Commission. If the Commission does not require Tri-State to file the documents, Tri-State will have unlimited discretion to modify policies that significantly affect rates, terms, and conditions of jurisdictional service without Commission review.

IV. THE COMMISSION SHOULD CONDITION ANY APPROVAL OF TRI-STATE'S RATE SCHEDULES ON THEIR REVISION TO MEET THE FPA JUST AND REASONABLE STANDARD

If the Commission accepts Tri-State's Stated Rate and WESC filings without revision, it will create bad policy by accepting filings that potentially are inconsistent with the FPA for two main reasons. First, the WESCs that Tri-State filed as rate schedules in Docket No. ER19-2444 (and the associated unfilled material policies) are inconsistent with Commission precedent and PURPA because they cap member distributed and renewable generation at 5 percent. Second, the rate schedules consist of breached contracts.

A. The WESCs Are Inconsistent with Commission Precedent and PURPA

The Commission should condition any approval of the WESCs on their revision to conform with the FPA because, as submitted, the WESCs incorporate by reference provisions that are contrary to PURPA and Commission orders. A line of Commission precedent holds that Tri-State cannot limit member purchases from QFs or recoup associated losses. But, the WESCs that Tri-State filed nonetheless limit member

purchases of distributed or renewable generation to 5 percent of a member's requirements:

Member shall have the right to elect to receive from 95% to 100% from Seller, so that up to 5% of its requirements can be obtained from distributed or renewable generation owned or controlled by the Member.⁴⁵

As discussed above, Board Policy 101 operates in tandem with this contract provision to create the rights and obligations of Tri-State and its members regarding distributed and renewable generation.

In 2016, the Commission reiterated that Tri-State could not limit member purchases from QFs to 5 percent of requirements.⁴⁶ In 2015, it ruled that a member is not required by PURPA or the Commission's regulations to seek waiver of its purchase obligation.⁴⁷ Surprisingly, however, Tri-State last revised Board Policy No. 101 on September 6, 2018, and the policy continues to limit member QF purchases to 5 percent *and* provide for members to seek waiver of their obligation to purchase QF energy/capacity.

⁴⁵ Rate Schedule FERC No. 31, § 1(a).

⁴⁶ *Tri-State Generation and Transmission Ass'n, Inc.*, 155 FERC ¶ 61,269 at P 19 (“[I]n the instant dispute between Tri-State and Delta-Montrose, the Commission has already ruled that Delta Montrose has an obligation under PURPA to purchase QF power notwithstanding the contract’s 5 percent limitation, and as in [*Pub Serv. Co. of N.H. v. N.H. Elec. Corp.*, 83 FERC 61,224 (1998)], to vindicate that determination we find that Tri-State’s proposed recovery of any resulting losses that flow from QF purchases above the 5 percent limitation should be rejected.”). *Delta-Montrose Elec. Ass’n*, 151 FERC ¶ 61,238 at P 54 (finding that Tri-State member Delta-Montrose “is obligated by section 210 of PURPA and section 292.303(a) of the Commission’s regulations to purchase power from *any* QF that can deliver its power to Delta-Montrose, regardless of the terms of Delta-Montrose’s contract with Tri-State”).

⁴⁷ *Delta-Montrose Elec. Ass’n*, 151 FERC ¶ 61,238 at P 55.

Tri-State must amend its WESCs and Board Policy no. 101 to comply with the Commission's prior orders and the just and reasonable standard, then file them with the Commission.

B. The WESCs that Tri-State Filed as Rate Schedules Potentially Are Inconsistent with the FPA Because They Contain Conflicting Terms

The WESCs that Tri-State submitted in Docket No. ER19-2444 are explicitly governed by Colorado law, yet inherently violate Colorado law. When the parties executed the contracts in 2007, they agreed to specific terms regarding the applicable law:

This Contract shall in all respects be governed by, and controlled in accordance with, the laws of the State of Colorado. If any article, section, paragraph, clause or provision of this Contract shall be finally adjudged by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Contract shall remain in full force and effect as though such article, section, paragraph, clause or provision or any part thereof so adjudicated to be invalid or unenforceable had not been included herein.⁴⁸

Because the existing WESCs explicitly limit choice of law to Colorado, Colorado law governs the parties' rights and obligations under the contract. In turn, Colorado law requires cooperative electric associations that are qualifying retail utilities to meet a 10 percent renewable portfolio standard in 2020, which increases to 20 percent if they serve over 100,000 meters.⁴⁹ Yet, as previously discussed, the WESCs and Board Policy No.

⁴⁸ Rate Schedule FERC No. 31, § 11.4 (emphasis added).

⁴⁹ Col. Rev. Stat. § 40-2-124, (1)(c)(V)(D) & (V.5).

101 cap members to 5 percent distributed/renewable generation.⁵⁰ This 5 percent cap inherently forces members located in Colorado to violate Colorado law. At the very least, the Commission should examine WESCs executed with Colorado members to determine whether they are just and reasonable, and should condition any approval of Tri-State's filing upon Tri-State revising the WESCs to meet the just and reasonable standard.

V. CONCLUSION

Wherefore, the Commission should grant SMPA the relief requested in this Protest. Specifically, the Commission should: (1) direct Tri-State to file pursuant to Section 205 of the FPA the Bylaws and Board Policies that directly and significantly affect such service; and (2) condition any acceptance of the filings on Tri-State filing said documents or rate schedules, and revising them to comply with the FPA, Commission precedent, PURPA, and Colorado law.

⁵⁰ *See, e.g.*, Rate Schedule FERC No. 31, § 1(a).

Respectfully submitted,

/s/

Richard L. Roberts

Laura V. Swett

Step toe & Johnson LLP

1330 Connecticut Avenue, NW

Washington, DC 20036

(202) 429-3000

rroberts@steptoe.com

lswett@steptoe.com

Attorneys for San Miguel Power Association,
Inc.

Attachment A

Tri-State Articles of Incorporation and Bylaws

ARTICLES OF INCORPORATION AND BYLAWS

Tri-State Generation and Transmission Association, Inc.
1100 West 116th Avenue
Westminster, Colorado 80234

(303) 452-6111

April 2019

AMENDED AND RESTATED ARTICLES OF INCORPORATION

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**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION, INC.**

**ARTICLE I
NAME**

The name of this Corporation is TRI-STATE GENERATION
AND TRANSMISSION ASSOCIATION, INC.

**ARTICLE II
PURPOSES**

This Corporation is organized for the purposes of:

- (a) Generating, manufacturing, purchasing, acquiring and accumulating electric power and energy for its members and transmitting, distributing, furnishing, selling and disposing of such electric power and energy primarily to its members, provided that this Corporation may dispose of its electric power and energy to other than members insofar as it may have excess power and energy which can be disposed of on an interchange or sales basis for the ultimate benefit of its members; and
- (b) Any other lawful purpose.

**ARTICLE III
DURATION**

This Corporation shall have perpetual existence.

ARTICLE IV PRINCIPAL PLACE OF BUSINESS

The principal office of this Corporation shall be 1100 West 116th Avenue, Westminster, Colorado 80234, and this Corporation may maintain offices and operations at such other place or places in the United States as the Board of Directors may from time to time decide.

ARTICLE V MEMBERSHIP AND VOTING

Section 1. Membership. Membership in this Corporation shall be limited to any cooperatively-owned power supplier, public power district or other entity accepted for membership by the Board of Directors of this Corporation in accordance with the Bylaws of this Corporation.

Section 2. Voting. Each member shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the members. Proxy voting, voting by mail, and cumulative voting shall not be permitted. At all meetings of the members at which a quorum is present all questions shall be decided by a vote of a majority of the members voting thereon, except as otherwise provided by applicable law, these Articles of Incorporation or the Bylaws of this Corporation.

ARTICLE VI ORGANIZATIONAL STRUCTURE

This Corporation is formed without any purpose of direct gain or profit to itself, and it shall be operated on a cooperative, non-profit basis for the mutual benefit of its members. This Corporation's operations shall be conducted such that all members furnish capital for this Corporation through their patronage. This Corporation shall be obligated to account on a patronage basis to all its members as provided in the Bylaws. In no event shall this Corporation permit non-member sales on a patronage basis. In the event of dissolution, the disposition of the net earnings and the assets of this Corporation shall be as provided in the Bylaws.

ARTICLE VII BOARD OF DIRECTORS

Section 1. Number and Qualifications. The business and affairs of this Corporation shall be managed by a Board of Directors. Except as set forth in Article XIII of the Bylaws, the number of directors shall equal the number of members of this Corporation and one (1) director shall be elected by each member. The names and post office addresses of the current directors of this Corporation, who shall manage the business and affairs of this Corporation until the next annual meeting of members or until their successors shall have been elected and shall have qualified according to law and the Bylaws of this Corporation, are:

Mr. Lyle Adair, Director
P.O. Box 2007
Gallup, NM 87301

Mr. Wayne R. Cobb, Director
HCR 75, Box 32
Merriman, NE 69218

Mr. Harold Baca, Director
P.O. Box 1331
Socorro, NM 87801

Mr. Louis Costello, Director
7780 Highway 135
Gunnison, CO 81230

Mr. Lloyd E. Barling, Director
P.O. Box 5
Meeteetse, WY 82433

Mr. Jay W. Cox, Director
P.O. Box 77
Winston, NM 87943

Mr. Robert Bledsoe, Director
Box 435
Hugo, CO 80821

Mr. William W. Dalles, Director
179 Dalles Lane
Laramie, WY 82070-9725

Mr. James Boyd Jr., Director
151 State Highway 66
Longmont, CO 80501

Mr. Bernard Fehringer, Director
631 Road 115
Sidney, NE 69162-4108

Mr. Tony Casados, Director
P.O. Box 186
Tierra Amarilla, NM 87575

Mr. Jack Finnerty, Director
285 Slater Road
Wheatland, WY 82201

Mr. Wayne Child, Director
9816 Child Road
Cheyenne, WY 82009

Mr. R.W. Gillespie, Director
P.O. Box 218
Springer, NM 87747

Mr. A. W. Gnatkowski, Director
Box 48 Ancho Route
Carrizozo, NM 88301

Mr. Leroy Gonzales, Director
P.O. Box 416
Peñasco, NM 87553

Mr. Rick L. Gordon, Director
P.O. Box 518
Simla, CO 80835-0518

Mr. Ed Hansen, Director
4554 County Road 74E
Livermore, CO 80536

Mr. Timothy Hoffner, Director
7513 Road 6
Wiggins, CO 80654

Mr. Harold Hopkin, Director
203 Lane 10-1/2
Powell, WY 82435

Mr. Donald Johnson, Director
37488 County Road 18
Holyoke, CO 80734

Mr. James H. Johnson, Director
P.O. Box 3135
Winter Park, CO 80482

Mr. Hal Keeler, Director
4555 Solana Road SE
Deming, NM 88030

Mr. Everett D. Kilmer, Director
Box 714
Lusk, WY 82225

Mr. Gary Kniss, Director
Route 2, Box 336
Bayard, NE 69334

Mr. Gerald W. Lorenz, Director
Route 1, Box 30
San Acacio, CO 81151

Mr. Gary L. Merrifield, Director
Box 152
Buena Vista, CO 81211

Mr. Davin Montoya, Director
7463 Highway 160
Hesperus, CO 81326

Mr. Christopher Moore, Director
P.O. Box 1491
Montrose, CO 81402

Mr. Marcellino Ortiz, Director
P.O. Box 117
Rowe, NM 87562

Mr. David R. Salazar, Director
P.O. Box 1052
Española, NM 87532

Mr. C. Jim Soehner, Director
38566 County Road 13
Wray, CO 80758

Mr. Wid Stevenson, Director
HCR 62, Box 39
Amistad, NM 88410

Mr. Darryl D. Stout, Director
P.O. Box 1056
Meeker, CO 81641

Mr. Harold Thompson,
Director
P.O. Box 9
Jeffrey City, WY 82310-0009

Mr. Gary Wood, Director
P.O. Box 556
Cloudcroft, NM 88317

Mr. Jerry Underwood, Director
7000 Valley Road
Alliance, NE 69301

Mr. Bill Wright, Director
47818 Road X
Walsh, CO 81090-0267

Mr. Donald Tripple, Director
250511 County Road S
Gering, NE 69341

Mr. Robert Yeik, Director
Route 2, Box 317
Torrington, WY 82240

Mr. Travis Waller, Director
P.O. Box 7586
Pueblo West, CO 81007

Mr. Jack N. Young, Director
P.O. Box 443
Monticello, UT 84535

Ms. Kristi Westfall, Director
P.O. Box 212
Ouray, CO 81427

Mr. Terry Zeigler, Director
P.O. Box 618
Grant, NE 69140

Section 2. Director's Terms. Except as hereafter provided, the term of each director shall be from the time he or she is elected by his or her member and the fact of such election is certified to this Corporation by such member, in writing, until his or her member elects some other person to serve and the fact of such election is certified to this Corporation by such member in writing. Notwithstanding the foregoing, a person shall be eligible to be elected a director, and shall be eligible to remain a director, only if he or she has the qualifications set forth in the Bylaws. In addition, a director may be removed from the Board of Directors by the members in the manner provided in the Bylaws.

Section 3. Director Liability. No director of this Corporation shall be personally liable to this Corporation or its members for monetary damages for breach of fiduciary duty as a director, except for liability:

- (a) for a breach of the director's duty of loyalty to this Corporation or its members;
- (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

- (c) for a transaction from which the director derived an improper personal benefit; or
- (d) for an act or omission occurring prior to the date when the provisions of this Section (or predecessor thereto) became effective.

It is the intention of the members of this Corporation to eliminate or limit the personal liability of the directors of this Corporation to the greatest extent permitted under Colorado law. If amendments to the Colorado Revised Statutes are passed after the effective date of this Section which authorize cooperatives to act to further limit or eliminate the personal liability of directors, then the liability of the directors of this Corporation shall be limited or eliminated to the greatest extent permitted by the Colorado Revised Statutes, as so amended. Any repeal or modification of this Section by the members of this Corporation shall not adversely affect any right of or any protection available to a director of this Corporation which is in existence at the time of such repeal or modification.

Section 4. Indemnification. This Corporation shall indemnify persons who are or were directors and officers, and may indemnify employees and agents, to the full extent allowed by law, as set forth in the Bylaws.

ARTICLE VIII BYLAWS

The Bylaws of this Corporation may be altered, amended or repealed by the members or the directors of this Corporation in the manner specified in the Bylaws.

**AMENDED AND RESTATED
BYLAWS
OF
TRI-STATE GENERATION AND
TRANSMISSION ASSOCIATION, INC.**

As Amended and Restated by
the Members on April 3, 2019

**ARTICLE I
MEMBERSHIP**

Section 1: Membership. Applicants for membership in this Corporation shall be eligible for membership by:

- (a) Executing a written application for membership and agreeing to pay the membership subscription applicable to the class of membership, if any, established by the Board of Directors from time to time;
- (b) Agreeing to purchase from this Corporation electric power and energy as hereinafter specified in Section 3 of this Article I; and
- (c) Subject to Sections 6 and 7 of Article II of these Bylaws, agreeing to comply with and be bound by the Articles of Incorporation and Bylaws of this Corporation and any rules and regulations that relate to or concern the governance, oversight or management of this Corporation as adopted by the Board of Directors.

Each member of this Corporation existing as of the date of these Bylaws shall be and continue to be a member of this Corporation, until withdrawal, expulsion or termination of such membership as contemplated herein. Subject to the foregoing, no applicant shall become a member unless and until it has been accepted for membership by the Board of Directors or the members. No member may hold more than one membership in this Corporation, and no membership in this Corporation shall be transferable. Each member shall be entitled to one (1) vote and no more upon each matter submitted to vote at a meeting of the members.

Section 2: Additional Membership Classes. Notwithstanding any other provision of these Bylaws to the contrary, the Board of Directors may establish

one or more classes of membership in addition to the existing all-requirements class of membership. Such additional membership classes may include, without limitation, one or more partial requirements membership classes whereby a member who chooses to be a member of that class shall assume responsibility for meeting a portion of its load requirements. Members may choose their class of membership subject to any terms and conditions of membership and rights and preferences and limitations on the rights and preferences of the members of each additional class of membership as the Board of Directors establishes from time to time. Such rights and preferences and limitations on the rights and preferences may differ between membership classes and may be different for individual members within an additional class of membership. Provided however, that representation on the Board of Directors of any additional class of membership will be determined by a vote of the members of this Corporation at a meeting of the members of this Corporation.

Section 3: Purchase of Electric Power and Energy.

- (a) Unless otherwise specified by written agreement, or by the terms of these Bylaws, each member shall terminate any contract which it may have for the purchase of electric power and energy from any other supplier when electric power and energy becomes available from this Corporation or as soon thereafter as it may legally do so, and shall purchase from this Corporation electric power and energy as provided in the member's contract with the Corporation. Each member shall pay therefor monthly at rates or on a basis to be determined from time to time in accordance with these Bylaws. In connection with such purchase, each member and this Corporation expressly disclaim any intent or agreement to be a partnership, joint venture, single or joint enterprise, or any other business form except that of a cooperative corporation and member.
- (b) It is expressly understood that amounts paid for electric power and energy in excess of the cost of service are furnished by members as capital in this Corporation, and not as profit of or to this Corporation, and each member shall be credited with capital so furnished as provided in these Bylaws. Each member shall also pay all amounts owed by such member to this Corporation as and when the same shall become due and payable.

- (c) The rates for electric power and energy and for any other services provided by this Corporation may be different for different classes of membership and may be different for individual members within an additional class of membership.
- (d) Existing members shall continue to purchase from this Corporation and this Corporation shall continue to sell to such members electric power and energy in accordance with the terms and conditions of the all-requirements contracts existing as of the date of these Bylaws, and as such all-requirements contracts may be amended or replaced by another all-requirements contract until (i) such all-requirements contract is terminated or expires in accordance with its terms or (ii) is modified, amended or replaced due to a change in the member's membership class.

Section 4: Withdrawal, Expulsion, Termination and Reinstatement of Membership.

- (a) A member may withdraw from membership upon compliance with such equitable terms and conditions as the Board of Directors may prescribe provided, however, that no member shall be permitted to withdraw until it has met all its contractual obligations to this Corporation. The Board of Directors may, by the affirmative vote of not less than two-thirds (2/3) of all the directors, expel any member who fails to comply with any of the provisions of the Articles of Incorporation, Bylaws, or rules and regulations adopted by the Board of Directors from time to time, but only if such member shall have been given written notice by the Secretary of this Corporation that such failure makes it liable for expulsion from membership, and such failure shall have continued for at least ten (10) days after such notice was given. Any expelled member may be reinstated by vote of the Board or by vote of the members at any annual or special meeting.

- (b) Upon withdrawal, cessation of existence, or expulsion of a member, the membership of such member shall thereupon terminate. Termination of membership in any manner shall not release a member from any debts due this Corporation nor impair the obligations of a member under any contract with this Corporation.
- (c) The Board of Directors shall have authority to prescribe equitable terms and conditions to be applied when a member withdraws from membership, ceases existence, or is expelled from membership, and such may be done by policy or otherwise and may include procedures for the establishment of a trust fund to receive on behalf of such member's patrons all patronage capital as this Corporation may from time to time distribute to all of its members, or in lieu thereof procedures whereby a member proposing to withdraw from membership or ceases existence or who is expelled from membership, may elect to receive a discounted amount of patronage capital which has been allocated at the time of such withdrawal, cessation of existence, or expulsion from membership.

ARTICLE II

RIGHTS AND LIABILITIES OF MEMBERS

Section 1: Property Interest of Members. Members shall have no individual or separate interest in the property or assets of this Corporation, except that upon dissolution, after (a) all debts and liabilities of this Corporation shall have been paid, and (b) all capital furnished through patronage shall have been returned, as provided in these Bylaws, the remaining property and assets of this Corporation shall be distributed among the members in the proportion which the aggregate patronage of each bears to the total patronage of all members and former members pursuant to the provisions of applicable law.

Section 2: Non-Liability For Debts of Corporation. The private property of the members shall be exempt from execution or other liability for the debts of this Corporation and no member shall be liable or responsible for any debts or liabilities of this Corporation.

Section 3: Operation of Member's System. Except to the extent that failure shall be due to a cause beyond its control (such as failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor

disturbance, sabotage, inability to obtain permits, licenses, rights-of-way or authorizations from any local, state or federal agency or any person, or restraint by court or public authority), which by exercise of due foresight the member could not have reasonably been expected to avoid, and which by exercise of due diligence it shall be unable to overcome, each member shall continuously operate and maintain its system for the full term of its contract with this Corporation, using reasonable diligence to supply therefrom to patrons within its service area (without contraction due to acts of omission of the member) electric energy provided by this Corporation pursuant to the contract. This provision is enforceable by specific performance and/or injunction.

Section 4: Transfers by a Member. A member shall not take or suffer to be taken, with respect to a person or entity other than another member, any steps for reorganization or to consolidate with or merge into any corporation, or to dissolve and wind up its affairs, or to sell, lease, transfer or otherwise dispose of all or a substantial portion of its assets without approval of the Board of Directors. The Board of Directors shall grant such approval if (a) either (i) the member pays and discharges this Corporation from further liability with respect to that member's proportionate share (as fairly apportioned by the Board) of this Corporation's long-term obligations (such as promissory notes, purchased electric energy, fuel, plant or equipment leases and the like) which have been incurred by this Corporation in order to have available electric energy service assuming compliance with these Bylaws; or (ii) the transferee or surviving corporation, as the case may be, is legally, financially and technically capable of performing the member's obligations and assumes, by delivery to this Corporation of a written instrument (satisfactory in form to this Corporation), all of the member's obligations; (b) the transfer will not make obtaining by this Corporation of debt capital unduly more difficult, expensive or burdensome; and (c) other conditions reasonably set by the Board of Directors to financially protect this Corporation and its other members or required by or on behalf of the holders of any long-term debt obligations then outstanding are met.

Section 5: Debt Responsibility. Each member shall pay all amounts owed by it to this Corporation as and when the same shall become due and payable. Any amount owed by a member to this Corporation shall first be deducted and offset against any payment or distribution by this Corporation of (a) capital furnished by or allocated to the member pursuant to Article VII of these Bylaws, (b) refunds with respect to revenues paid by the member for services provided by this Corporation, and (c) other amounts that may be owed to that member.

Section 6: Independent Operation. This Corporation and member agree that the Corporation shall independently operate and maintain an electricity generation and transmission system and that the member will independently operate and maintain a separate electricity distribution system. This Corporation and member each acknowledge that standards, rules and/or

regulations concerning the operation and maintenance of their separate systems are different and are the product of government and industry sources that apply separately to the two different systems, and that each will be solely responsible for undertaking reasonable efforts to operate and maintain their independent systems consistent with sound practices as derived from the standards, rules and/or regulations that apply to each separately.

Section 7: Control. This Corporation and member each acknowledge that the Corporation has no control over or the right, ability or authority to control the electric facilities, power lines, operations or maintenance practices of the member and that others, including the member's own governing board, management, member-customers and regulators, if any, control the member and are best situated to exercise control, oversight and/or guidance of the member's operations and maintenance practices.

ARTICLE III MEETINGS OF MEMBERS

Section 1: Annual Meeting. The annual meeting of the members of this Corporation shall be held prior to September 30 of each year, and in any such location within any state where any of the members serve, the exact date and location to be determined by the Board of Directors. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of this Corporation.

Section 2: Special Meetings. Special meetings of the members of this Corporation shall be held at the place, time and date specified in the notice of the meeting. A special meeting may be called by (a) a resolution of the Board of Directors, upon a written request signed by any ten (10) directors, (b) by the Chairman and President, or (c) by twenty-five percent (25%) of the members by written petition submitted to the Chairman and President. It shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided.

Section 3: Notice of Meetings. Notice of a meeting of the members shall state the time, date, place, and in the case of a special meeting, purpose of the special meeting. The notice of a meeting of the members must be delivered by the Secretary at least thirty (30) days, but no more than sixty (60) days, before the date of the meeting, either personally, by appropriate telecommunication methods or by mail, to each member at the direction of the Chairman and President or the Secretary or the persons calling the meeting. If mailed, such notice shall be deemed delivered ten (10) days after it is deposited in the United States mail, postage paid and addressed to the member at its address as it appears on the records of this Corporation. Failure of any member to receive

such notice shall not invalidate any action taken by the members at such meeting.

Section 4: Delegates. Each member shall be entitled to select one of its directors, trustees or general manager (which may, but is not required to be, the same person as the member's director serving on the Board), to act as the delegate, and alternate delegate or alternate delegates, at meetings of the members of this Corporation. Such delegate or alternate delegate(s) when so selected shall continue to be the delegate or alternate(s), respectively, of such member until he or she shall resign or cease to be a director, trustee or general manager of the member or the member shall have selected a successor delegate or alternate(s) and shall have notified the Secretary of this Corporation by a written instrument executed in the name of the member through its proper officer or officers. In the event any member shall fail to select a delegate or alternate delegate(s) as herein provided or the delegate or alternate(s) selected by such member are unable or unwilling to serve or for any cause fail to so serve, the President of the member shall serve as its representative and cast its vote.

Section 5: Quorum. The presence of delegates representing at least a majority of the members shall constitute a quorum for the transaction of business at meetings of the members. If less than a quorum is present at any meeting, a majority of those delegates present in person may adjourn the meeting from time to time without further notice.

Section 6: Voting. At all meetings of the members at which a quorum is present, all questions shall be decided by a vote of a majority of the members voting thereon except as otherwise provided by law, the Articles of Incorporation or these Bylaws. Each member shall be entitled to only one (1) vote upon each matter submitted to a vote at a meeting of the members. In the event the delegate of a member is absent, or is unable or refuses to act, the alternate delegate(s) designated by such member shall act in his or her stead and shall cast the vote of such member. However, if both the delegate and the alternate delegate(s) of such member are absent, or are unable or refuse to act, then the President of such member may represent and cast the vote of such member as provided in Section 4 of this Article. No individual may represent more than one member.

ARTICLE IV DIRECTORS

Section 1: General Powers. The business and affairs of this Corporation shall be managed by a Board of Directors which shall exercise all of the powers of this Corporation except such as are by law, the Articles of Incorporation or these Bylaws conferred upon or reserved to the members.

Section 2: Qualifications; Removal. No person shall be eligible to become or remain a director of this Corporation who is not a director, trustee or general manager of a member of this Corporation. The Board of Directors may remove any director for cause, which includes but is not limited to, a director holding office in violation of this Section.

Section 3: Election and Certification. Except as provided in Section 4 hereof, each member shall elect one (1) of its directors, trustees or its general manager to serve on the Board of Directors of this Corporation. Each member shall certify the name of such person to this Corporation by means of the Secretary of each member promptly informing the Secretary of this Corporation in writing of such person's name.

Section 4: Tenure of Office. Each director shall serve until his or her member elects some other person to serve and the fact of such election is certified to this Corporation by such member in writing; provided, however, that a person shall be eligible to be elected a director, and shall be eligible to remain a director, only if he or she has the qualifications set forth in these Bylaws.

Each existing director shall be deemed elected by the member of which he or she is a director, trustee or general manager unless such director's member elects some other person in accordance with the provisions of Section 3 hereof and the fact of such election is certified to this Corporation by such member in writing.

Section 5: Vacancies. A vacancy occurring in the Board of Directors shall be filled by the member losing representation because of the vacancy, electing some other person in accordance with the provisions of Section 3 hereof and certifying the fact of such election to this Corporation in writing.

Section 6: Compensation. Directors shall receive no salary for their services, as directors, except that by resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board of Directors and for attendance at each local, state, regional, and national meeting, hearing or convention of other organizations in which this Corporation has subscribed to membership under Section 1 of Article XI of these Bylaws, and for attendance at other meetings, hearings, or conventions where directors are acting on behalf of this Corporation and within the scope of their authority as directors of this Corporation. The purpose of authorizing directors to attend such meetings, hearings, and conventions shall be to permit them to do and perform all acts and things and to execute all powers which may be necessary, convenient or appropriate to accomplish the purpose for which this Corporation is organized. No director shall receive compensation for serving this Corporation in any other

capacity, nor shall any close relative of a director receive compensation for serving this Corporation, unless payment and amount of compensation shall be specifically authorized by a vote of the members or the service by such director or close relative shall have been certified by the Board of Directors as an emergency measure; provided, however, this Corporation may provide a per diem compensation and reimbursement of out-of-pocket expenses for the Chairman and President, and for any other officer or director of this Corporation who is specifically authorized by the Board to undertake a specific assignment because the Chairman and President is unable to do so, so long as such compensation and expenses are reasonable in amount, are for services rendered to this Corporation and are expenses incurred in connection with said services, and that such services are in addition to services rendered as a director. Notwithstanding the foregoing, any per diem compensation which is authorized for additional services shall not be more than 25% greater than this Corporation's per diem compensation for its directors.

Section 7: Action Taken Without a Meeting. Notwithstanding any other provision hereof, any action required by law to be taken at a meeting of the Board of Directors of this Corporation, or any action which may be taken at a meeting of the Board of Directors of this Corporation, may be taken without such meeting if a consent in writing, setting forth the action taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of such directors.

ARTICLE V MEETINGS OF DIRECTORS

Section 1: Regular Meetings. A regular meeting of the Board of Directors shall be held without notice, immediately after, and at the same place as the annual meeting of the members. Regular meetings of the Board of Directors shall be held at least 12 times in each year at such times and places as the Board of Directors may provide. Such regular meetings may be held without notice other than appropriate Board action at a meeting fixing the time and place thereof. Meetings may be conducted by telephonic or video conference.

Section 2: Special Meetings. Special meetings of the Board of Directors may be called by the Chairman and President or a majority of the directors, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. The Chairman and President or the directors calling the meeting shall fix the time and place for the holding of the meeting.

Section 3: Notice of Directors' Meetings. Written notice of the time, place and purpose of any special meeting of the Board of Directors shall be delivered to

each director not less than five (5) days previous thereto, either personally, by appropriate telecommunications methods or by mail, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the Chairman and President or the directors calling the meeting. If mailed, such notice shall be deemed to be delivered five (5) days after it is deposited in the United States mail and addressed to the director at his or her address as it appears on the records of this Corporation with postage thereon prepaid.

Section 4: Quorum. A majority of the directors shall constitute a quorum; provided, that if less than such majority of the directors is present at said meeting, a majority of the directors present may adjourn the meeting from time to time; and provided further, that the Secretary shall notify any absent directors of the time and place of such adjourned meeting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 5: Presence of Others. The Board of Directors may, at its option, exclude any person, other than a director, from a meeting of the Board of Directors.

ARTICLE VI OFFICERS

Section 1: Number. The officers of this Corporation shall be a Chairman and President, Vice-Chairman, Secretary, Treasurer, two or more Assistant Secretaries and such other officers as may be determined by the Board of Directors from time to time.

Section 2: Election and Term of Office. The officers shall be elected by secret ballot, annually by and from the Board of Directors at the meeting of the Board of Directors held immediately after the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until the first meeting of the Board of Directors following the next succeeding annual meeting of the members or until such officer's successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the Board of Directors for the unexpired portion of the term.

Section 3: Removal of Officers by the Board of Directors. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors (1) if the officer ceases to be a board member for whatever reason, or (2) whenever in its judgment the best interest of this Corporation will be served thereby. In addition, any director may request removal of an officer by filing with the Secretary such a written list of reasons for removal together with a petition signed by at least twenty-five percent (25%) of the directors. The

officer involved shall be informed in writing of the reasons at least thirty (30) days prior to the Board meeting at which removal is to be considered, and shall have an opportunity to be present or represented by counsel at the meeting and to present relevant evidence, and the director or directors seeking removal of such officer shall have the same opportunity.

Section 4: Chairman and President. The Chairman and President shall:

- (a) Be the principal executive officer of this Corporation and, unless otherwise determined by the members or the Board of Directors, shall preside at all meetings of the members and the Board of Directors;
- (b) Sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board of Directors to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of this Corporation, or shall be required by law to be otherwise signed or executed; and
- (c) In general perform all duties incident to the office of Chairman and President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5: Vice-Chairman. In the absence of the Chairman and President, or in the event of the Chairman and President's inability or refusal to act, the Vice-Chairman shall perform the duties of the Chairman and President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman and President. The Vice-Chairman shall also perform such other duties as from time to time may be assigned to the Vice-Chairman by the Board of Directors.

Section 6: Secretary. The Secretary shall:

- (a) See that the minutes of the meetings of the members and of the Board of Directors are kept in one or more books provided for the purpose;
- (b) See that all notices are duly given in accordance with these Bylaws or as required by law;

- (c) See that the corporate seal is affixed to all documents, the execution of which on behalf of this Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws;
- (d) See that a register of the names and post office addresses of all members is kept;
- (e) See that the books and records of this Corporation are kept as required by law;
- (f) See that there is kept on file at all times at the office of this Corporation a complete copy of the Articles of Incorporation and Bylaws of this Corporation containing all amendments thereto (which copy shall always be open to the inspection of any member), and at the expense of this Corporation that there is forwarded a copy of the articles and bylaws and all amendments thereto to each member and to each delegate who requests the same; and
- (g) In general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Board of Directors.

Section 7: Treasurer. The Treasurer shall:

- (a) Have general charge and custody of and be generally responsible for all funds and securities of this Corporation;
- (b) Be generally responsible for the receipt of and the issuance of receipts for all monies due and payable to this Corporation, and for the deposit of all such monies in the name of this Corporation in accordance with the provisions of these Bylaws; and
- (c) In general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Board of Directors.

Section 8: Chief Executive Officer. The Board of Directors may appoint a Chief Executive Officer who may be, but who shall not be required to be, a

member of any member of this Corporation, and who shall perform such duties and shall exercise such authority as the Board of Directors may from time to time vest in such Chief Executive Officer. The Chief Executive Officer may not serve as a director of this Corporation.

Section 9: Assistant Secretaries. The Board of Directors shall appoint at least two Assistant Secretaries, each of whom shall be a Board member, who shall assist the Secretary in performing the duties of that office. An Assistant Secretary, unless otherwise directed by the Board or the Secretary, may give all notices and attest to all documents of this Corporation in the stead of the Secretary, reporting to the Secretary with respect to all actions taken in his or her stead.

Section 10: Bonds of Officers. The Treasurer and any other officer or agent of this Corporation charged with responsibility for the custody of any of its funds or property shall (at this Corporation's expense) give bond in such sum and with such surety as the Board of Directors shall determine. The Board of Directors in its discretion may also require any other officer, agent or employee of this Corporation to give bond in such amount with such surety as it shall determine.

Section 11: Compensation. The powers, duties and compensation of officers and agents shall be generally determined by the Board of Directors, subject to the provisions of these Bylaws and applicable state law with respect to compensation for directors, and close relatives of directors.

Section 12: Reports. The officers of this Corporation shall submit at each annual meeting of the members reports covering the business of this Corporation for the previous fiscal year. Such reports shall set forth the condition of this Corporation at the close of such fiscal year.

Section 13: Executive Committee. An Executive Committee shall be established, consisting of nine (9) persons, namely the Chairman and President, the Vice-Chairman, the Secretary, the Treasurer and two Assistant Secretaries of this Corporation at any time duly elected by the Board of Directors and then holding office, plus three (3) members at large elected by and from the Board of Directors. At all times, at least two (2) Committee members shall be directors representing former members of Plains Electric Generation and Transmission Cooperative, Inc.; at least one (1) Committee member shall be a director representing a member headquartered in Colorado; at least one (1) Committee member shall be a director representing a member headquartered in Wyoming; and at least one (1) Committee member shall be a director representing a member headquartered in Nebraska. The Executive Committee, subject to applicable law, shall have the power to act for and in the place of the Board of Directors at any duly called meeting of the Board of Directors at which

a quorum is found not to be present, and also in the event of the necessity of taking action under any circumstances that the Executive Committee shall consider and make a formal finding that a situation exists requiring action before a meeting of the Board of Directors can be called, but only if a majority of the members of the Committee are present and at least five (5) of the Committee members shall vote in agreement upon any action taken by the Committee. It shall be the duty of the Secretary of the Corporation to prepare minutes of all meetings and actions of the Executive Committee, to record the same as a part of the minutes and records of the Board of Directors, and, after each such meeting or action, to promptly provide a copy of the minutes to each member of the Board of Directors.

ARTICLE VII OPERATION AS A COOPERATIVE CORPORATION

Section 1: Cooperative Corporation. The Corporation and members agree that the Corporation is and shall organize as a cooperative corporation under the laws of the State of Colorado. No other business form arising from the relationship between the Corporation and the member is agreed to, intended or permitted, including without limitation partnership, joint venture, single or joint enterprise, nor is any agency, fiduciary or similar relationship agreed to, intended or permitted. The sole relationship between this Corporation and each member shall be that of a cooperative corporation and member as provided by Colorado statutory law.

Section 2: Interest or Dividends on Capital Prohibited. The Corporation shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its members. No interest or dividends shall be paid or payable by the Corporation on any capital furnished by its members.

Section 3: Patronage Capital in Connection With Furnishing Electric Energy. In the furnishing of electric energy the Corporation's operations shall be so conducted that all members will through their patronage furnish capital for the Corporation. In order to induce patronage and to assure that the Corporation will operate on a non-profit basis, the Corporation is obligated to account on a patronage basis to all its members for all amounts received and receivable from the furnishing of electric power and energy in excess of the sum of (a) operating costs and expenses properly chargeable against the furnishing of electric power and energy, (b) amounts required to offset any losses incurred during the current or any prior fiscal year, and (c) adjustments to reserves or deferred credit accounts for the purpose of stabilizing margins and rate increases from year to year. The sum of subparagraphs (a), (b) and (c) shall be identified as "operating costs and expenses" for purposes of this Article. All amounts in excess of operating costs and expenses at the moment of receipt by the Corporation are received with the understanding that they are furnished by the members as

capital and are not profit to or from the Corporation or its operations. The Corporation is obligated to allocate by credits, to a capital account for each member, all such amounts in excess of operating costs and expenses. The books and records of the Corporation shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each member is clearly reflected and credited in an appropriate record to the capital account of each member, and the Corporation shall, within a reasonable time after the close of the fiscal year, notify each member of the amount of capital so credited to such member's account. All such amounts credited to the capital account of any member shall have the same status as though they had been paid to such member in cash in pursuance of a legal obligation to do so and such member had then furnished the Corporation corresponding amounts for capital.

All other amounts received by the Corporation from its operations in excess of costs and expenses shall, insofar as permitted by law, be used to offset any losses incurred during the current or any prior fiscal year; and to the extent not needed for that purpose, allocated to its members on a patronage basis, and any amount so allocated shall be included as a part of the capital credited to the accounts of members, as herein provided.

Allocation units may be established by the Board of Directors on a reasonable and equitable basis. If allocation units are established, the Board of Directors shall adopt such reasonable and equitable accounting procedures as will, in the Board's judgment, equitably allocate among such allocation units this Corporation's items of income, gain, expense and loss. The Board of Directors may establish procedures under which a net loss incurred within an allocation unit may be offset against the net margins earned by another allocation unit or units and the right, if any, of such other allocation unit or units to recoup such offset out of future net margins of the allocation unit that incurred the net loss. The Corporation shall give reasonable notice to each member of the effect of such offset on its capital credit allocation.

In the event of dissolution or liquidation of the Corporation, after all outstanding indebtedness of the Corporation shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the Board of Directors shall determine that the financial condition of the Corporation will not be impaired thereby, the capital then credited to members' accounts may be retired in full or in part and such may be done by policy or otherwise.

Capital credited to the account of each member shall be assignable only on the books of the Corporation pursuant to written instruction from the assignor and only to successors in interest in the business or the physical assets of such

member unless the Board of Directors, acting under policies of general application, shall determine otherwise.

The members of the Corporation, by dealing with the Corporation, acknowledge that the terms and provisions of the Articles of Incorporation and Bylaws shall constitute and be a contract between the Corporation and each member and both the Corporation and the member are bound by such contract, as fully as though each member had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the Bylaws shall be called to the attention of each member of the Corporation by keeping a copy of such Bylaws available for inspection by any member in the Corporation's office.

ARTICLE VIII DISPOSITION OF PROPERTY

This Corporation may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized at a meeting of the members thereof by the affirmative vote of not less than two-thirds (2/3) of all the members of this Corporation, and unless the notice of such proposed sale, mortgage, lease or other disposition or encumbrance shall have been contained in the notice of the meeting. It is understood, however, that this Article shall not apply to a merger or consolidation of this Corporation with any other cooperative corporation, and it is further understood that, notwithstanding anything herein contained, the Board of Directors of this Corporation, without the authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbering of, any or all the property, assets, rights, privileges, licenses, franchises, and permits or other things of value of this Corporation, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the Board of Directors shall determine, to secure any indebtedness of this Corporation.

ARTICLE IX SEAL

The corporate seal of this Corporation shall be in such form as may be approved by the Board of Directors from time to time.

ARTICLE X FINANCIAL TRANSACTIONS

Section 1: Contracts. Except as otherwise provided in these Bylaws, the Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of this Corporation, and such authority may be general or confined to specific instances.

Section 2: Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of this Corporation shall be signed by such officer or officers, agent or agents, employee or employees of this Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 3: Deposits. All funds of this Corporation shall be deposited from time to time to the credit of this Corporation in such financial institutions selected by the Board of Directors. Such financial institutions must have deposits insured. In addition, funds of this Corporation also may be deposited in such investment securities or funds as the Board of Directors may elect.

Section 4: Fiscal Year. The fiscal year of this Corporation shall begin on the first day of January of each year and shall end on the 31st day of December of the same year.

ARTICLE XI MISCELLANEOUS

Section 1: Membership in Other Organizations. This Corporation may become a member of or purchase stock in any other organization without an affirmative vote of the members, upon an express determination by the Board of Directors that such membership or purchase of stock is in the best interests of this Corporation.

Section 2: Interested Transactions. No contract or other transaction between this Corporation and a member shall be affected or invalidated by reason of the mere fact that any one (or more) of the Board members, officers or other members of the management of this Corporation is (or are) interested in or is (or are) a member(s), trustee(s), officer(s), or employee(s) of such member or of a cooperative corporation, nonprofit corporation, partnership, joint venture, trust, unincorporated association or other entity in which the member is interested or is (or are) a patron(s) or interested in a patron(s) of such member. Such an interested Board member may be counted for the purpose of determining the presence of a quorum, and he or she may participate in any

discussion and the voting relating to such a contract or other transaction. Nothing herein shall affect, however, that Board member's responsibility to perform his or her duties in good faith, in a manner the Board member believes to be not opposed to the best interest of this Corporation and otherwise in accordance with applicable law.

Section 3: Waiver of Notice. Any member, delegate or director may waive in writing any notice of a meeting required to be given by these Bylaws. The attendance of a member, delegate or director at any meeting shall constitute a waiver of notice of such meeting by such member, delegate, or director, except in case a member, delegate, or director shall attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

Section 4: Accounting System and Reports. The Board of Directors shall cause to be established and maintained a complete accounting system which, among other things, shall conform to Generally Accepted Accounting Principles (GAAP) and to the applicable laws and rules and regulations of any regulatory body having jurisdiction and applicable provisions of this Corporation's loan contracts. The Board of Directors also shall, after the close of each fiscal year, cause to be made a full and complete audit of the accounts, books and financial condition of this Corporation as of the end of each fiscal year. Such audit reports shall be submitted to the members at the next following annual meeting.

Section 5: Indemnification:

- (a) Officers', Board Members' and Employee's Indemnification. Subject to paragraphs (c), (d) and (e) of this Section 5, this Corporation shall indemnify any person who is or was a Board member, Officer or employee of this Corporation and any person who, while a Board member or Officer of this Corporation, is or was serving at the request of this Corporation as a director, Officer, partner, employee or agent of another cooperative or of a foreign or domestic corporation or nonprofit corporation, partnership, joint venture, trust, unincorporated enterprise or employee benefit plan or trust, and who is made a party to any action, suit or proceeding, civil or criminal, by reason of holding or having held such office or position.
- (b) Agents' Indemnification. Subject to paragraphs (c), (d) and (e) of this Section 5, this Corporation may indemnify any person, other than a Board

member, an Officer or employee acting as such, who has or had an agency relationship with this Corporation and who is made a party to any action, suit or proceeding, civil or criminal, by reason of service during the course of such relationship, including service at the request of this Corporation as a trustee, Officer, partner, employee or agent of another cooperative or of a foreign or domestic corporation or nonprofit corporation, partnership, joint venture, trust, unincorporated association, other incorporated or unincorporated enterprise or employee benefit plan or trust.

- (c) Indemnification Disqualification. A Board member, Officer or other person shall not be indemnified in connection with a proceeding by or in the right of this Corporation in which he or she was adjudged liable to this Corporation. A Board member, Officer or other person shall, further, not be indemnified in connection with any proceeding charging improper personal benefit derived by him or her, whether or not involving action in an official capacity, in which he or she was adjudged to be liable on the basis that the personal benefit was improperly derived. There shall be no indemnification unless the Board finds that the indemnitee:
- (i) conducted himself or herself in good faith;
 - (ii) reasonably believed (I) in the case of conduct in an official capacity, that his or her conduct was in the best interests of this Corporation, and (II) in all other cases, that his or her conduct was at least not opposed to the best interests of this Corporation; and
 - (iii) in the case of any criminal proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, be

determinative that the person is disqualified from receiving indemnification.

- (d) Indemnification Amount. Indemnification shall, pursuant to paragraph (a), and may pursuant to paragraph (b), be made against judgments, penalties, fines, settlements and compromises, cost and expenses, including attorneys' fees, reasonably incurred by or on behalf of the indemnitee in connection with the defense of such proceeding. Reasonable expenses incurred by a Board member, Officer or other person who is a party to a proceeding may be paid or reimbursed by this Corporation in advance of the final disposition of such proceeding if:
- (i) such person furnishes this Corporation with a written affirmation of his or her good faith belief that he or she is not disqualified from receiving indemnification under paragraph (c) of this Section;
 - (ii) such person furnishes to this Corporation a written undertaking by or on behalf of the person to repay such amount if it shall ultimately be determined that he or she is disqualified or, in the case of a person other than a Board member or an Officer acting as such, not fully indemnified in the Board's discretion; and
 - (iii) a determination is made that the facts then known to those making the determination would not preclude indemnification.
- (e) Indemnification Procedure. No indemnification under paragraphs (a) and (b) of this Section 5 shall be made unless authorized in the specific case after a determination has been made that indemnification is permissible in accordance with applicable state law and these Bylaws. Such determination shall be made:

- (i) by the Board by a majority vote of a quorum of Board members not at the time parties to the proceeding;
- (ii) if such a quorum cannot be attained, by a majority vote of a committee of the Board duly designated to act in the matter by a majority vote of the full Board, in which designated Board members who are parties may participate, and consisting solely of two or more Board members not at the time parties to the proceeding;
- (iii) by special legal counsel, selected by the Board or a committee thereof by vote as set forth in subparagraphs (i) or (ii) of this paragraph (e) or, if the requisite quorum of the full Board cannot be obtained therefor and such committee cannot be established, by a majority vote of the full Board, in which selection Board members who are parties may participate; or
- (iv) pursuant to a resolution of a majority of the members present and voting at any annual or special meeting.

Authorization of indemnification and determination as to the amount thereof shall be made in the same manner as the permissibility determination, except that if the permissibility determination is made by special legal counsel, authorization and amount determination shall be made in a manner specified in paragraph (e)(iii) of this Section 5 for the selection of such counsel.

ARTICLE XII AMENDMENTS

These Bylaws may be altered, amended or repealed by the members of this Corporation at any regular or special meeting provided that the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal. At any such meeting, the proposed alteration, amendment or repeal may be amended by the affirmative vote of a majority of the members of this Corporation. These Bylaws may also be altered, amended or repealed by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors at any regular or special meeting of said Board, provided that written notice of the proposed alteration, amendment or repeal shall be mailed

to each member of the Board of Directors and each member of this Corporation not less than forty-five (45) days before the date of such meeting. The directors, at such meeting, may amend the proposed alteration, amendment or repeal, but the same shall not become effective until written notice thereof has been mailed to each member of this Corporation not less than forty-five (45) days before the effective date thereof. At any time prior to the date of such meeting or prior to the effective date of such amended alteration, amendment or repeal, any ten (10) or more members of this Corporation may file a written resolution with the Secretary of this Corporation in protest of the proposed alteration, amendment or repeal of these Bylaws or of the amended alteration, amendment or repeal of these Bylaws, and in such event, said alteration, amendment or repeal of these Bylaws, or said amended alteration, amendment or repeal of these Bylaws, shall be of no validity unless approved by the members of this Corporation as heretofore provided.

Any ten (10) or more members of this Corporation may file a written resolution with the Secretary of this Corporation proposing an alteration, amendment or repeal of these Bylaws, and upon such resolutions being filed, the proposed alteration, amendment or repeal shall be placed upon the agenda of the next regular meeting of the Board of Directors for consideration and determination by the Board of Directors in the manner above described. If the determination of the Board of Directors is in the negative, the proposed alteration, amendment or repeal shall be placed upon the agenda of the next regular or special meeting of the members of this Corporation and submitted to the members of this Corporation for consideration and determination at such meeting. If the aforesaid resolution is not received by the Secretary of this Corporation in time sufficient to permit such resolution to be timely considered and determined by the Board of Directors prior to the next regular or special meeting of the members of this Corporation, then the proposal shall be noticed and submitted directly to the members of this Corporation in the manner just described.

ARTICLE XIII

MERGER OR CONSOLIDATION

In the event of a merger or consolidation of two or more members of this Corporation, any member which thereby will cease to exist may, if it wishes, prior to such time, transfer to the surviving or new member its right to elect a director to the Board of Directors of this Corporation, and such right shall continue to exist, if the transferee member so wishes, for a period of not to exceed three (3) years from the date of the merger or consolidation.

If a member which will cease to exist chooses to transfer its right to elect a director to the Board of Directors of this Corporation to the surviving or new member, the transferee member shall have the right to elect a person to fill such

position, if the transferee member so wishes, for a period of not to exceed three (3) years from the date of the merger or consolidation.

Each person so elected shall be entitled to one (1) vote and no more upon each matter submitted to a vote at a meeting of the Board of Directors. In situations where the presence or vote of a majority of directors is required, the presence of each such person shall be counted in determining whether or not a quorum exists, and the vote of each such person shall be counted in determining whether or not the necessary vote has been obtained.

Notwithstanding the foregoing, in the event of a consolidation of two or more members of this Corporation, and in the event one or more of such members transfers its right to elect a director to the Board of Directors of this Corporation to the new member, the new member will not have more votes, in total, than the number of rights assigned to it by the member(s) which will cease to exist.

In the event a member does not merge into or consolidate with another member, but instead sells all or substantially all of its assets to another member and thereupon ceases to exist, the foregoing provisions of this Article shall apply to such transaction.

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Attachment B

Board of Directors Policy No. 101 (Qualifying Facility Capacity and Energy Purchase Policy)



TRI-STATE
Generation and Transmission
Association, Inc.

Board of Directors Policy

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|---|-----------------------------|------------------------------|------------------------|
| Subject: QUALIFYING FACILITY CAPACITY AND ENERGY PURCHASE POLICY | | | Policy No.: 101 |
| Original Issue : 7-7-00 | Last Revised: 9-6-18 | Last Reviewed: 9-6-18 | Page 1 of 3 |

OBJECTIVES

Tri-State is dedicated to assuring an adequate and reliable long-term supply of electricity to its Member Systems at the lowest possible cost, consistent with sound business practices. Accordingly, and as a cooperative dedicated to consumer well-being and the public interest, Tri-State is committed to the conservation of natural resources by offsetting generation produced from non-renewable energy resources with generation produced from renewable energy resources, to the extent that such offset is cost-effective, efficient and practical.

ACCOUNTABILITY

The Chief Executive Officer.

SCOPE


Tri-State has the obligation under the regulations implementing the Public Utilities Regulatory Policies Act of 1978 (PURPA) to purchase capacity and energy from Qualifying Facilities (QFs), as defined in Section 201 of PURPA. This Policy establishes the implementation provisions to fulfill this obligation.

IMPLEMENTATION

Tri-State QF Purchases

This section details provisions that apply when Tri-State purchases capacity and/or energy from a QF:

Except where applicable law dictates otherwise, the price for capacity and energy for QFs shall be calculated annually by Tri-State through system production cost modeling of the Tri-State generation fleet, and will be used for the following calendar year. The results of the avoided cost calculations will be made available to developers of QFs upon request. This modeling will involve hourly chronological production cost methods to determine the hourly decremental cost of the Tri-State generation fleet. The decremental cost analysis will form the foundation of the standard price offering for QFs that are 1 MW nameplate capacity or smaller. For larger QFs, avoided cost calculations will be performed on a case-by-case basis. Pricing may be adjusted as appropriate for effects including, but not limited to, losses and intermittency. Capacity payments will be established based on avoided capacity costs, however when Tri-State is forecasting excess capacity, no capacity payments will be offered.

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|  _____, Chairman and President | Date: <u>9-6-18</u> |
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TRI-STATE
Generation and Transmission
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|---|-----------------------------|------------------------------|------------------------|
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Member System QF Purchases

This section details provisions that apply when a Member System purchases capacity and/or energy from a QF:

The Member System will ensure that any such QF project will have metering and telemetering equipment installed and operational that is satisfactory to Tri-State in conformance with the Tri-State Distributed Generation Metering Requirements. Tri-State will be granted access to the metering data and Tri-State, its employees, agents and contractors, will be granted a non-exclusive license to provide access to the metering installation for the purposes of verification and validation of the metering, and to install and maintain any additional metering that Tri-State may choose to install at the QF project point of interconnection with the Member System.

In the event that a Member System purchases capacity and/or energy from a QF and to the extent the total capacity and/or energy purchased from QFs and non-QFs does not result in the Member System purchasing less than 95% of its requirements from Tri-State (as established in the Wholesale Electric Service Contract and defined in Tri-State Board Policy No. 115), then the pricing, terms and conditions of such transaction as between Tri-State and the Member System, shall be implemented pursuant to Tri-State Board Policy No. 115.


In the event a Member System purchases capacity and/or energy from a QF pursuant to 18 C.F.R. section 292, (or any successor requirement) and that purchase results in the Member System purchasing less than 95% of its requirements from Tri-State (as established in the Wholesale Electric Service Contract and defined in Tri-State Board Policy No. 115), then Tri-State will bill that Member System an amount equal to Tri-State's lost revenue minus Tri-State's avoided cost that is associated with the Member System purchasing less than 95% of its requirements from Tri-State.

Transmission and Interconnection

To the extent that a QF interconnects with or takes transmission service from Tri-State, or power generated by the QF flows from the Member System onto the Tri-State transmission system, the transmission customer must request and obtain appropriate service from Tri-State under the terms of the Tri-State Open Access Transmission Tariff.

Waiver

Tri-State, together with any individual Tri-State Member System or Member Systems may apply to the Federal Energy Regulatory Commission (FERC) for a waiver of Tri-State's obligation to sell retail power to QFs, and the Tri-State Member System's obligation to purchase capacity

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|  _____, Chairman and President | Date: _____ 9-6-18 |
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TRI-STATE
Generation and Transmission
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Board of Directors Policy

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| Subject: QUALIFYING FACILITY CAPACITY AND ENERGY PURCHASE POLICY | | | Policy No.: 101 |
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and/or energy from QFs. Any Tri-State Member System may elect to join Tri-State in any such waiver application. If FERC grants the waiver, subject to any FERC conditions, Tri-State shall purchase the capacity and/or energy from the QF and the Tri-State Member System shall sell retail power to the QF.

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|  _____, Chairman and President | Date: <u>9-6-18</u> |
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Attachment C

Board of Directors Policy No. 316 (Non-Rate Dispute Resolution Policy)



TRI-STATE
Generation and Transmission
Association, Inc.

Board of Directors Policy

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|---|----------------------|-----------------------|-----------------|
| Subject: NON-RATE DISPUTE RESOLUTION POLICY | | | Policy No.: 316 |
| Original Issue: 9-4-14 | Last Revised: 9-6-18 | Last Reviewed: 9-6-18 | Page 1 of 6 |

OBJECTIVE

To establish a process to resolve any Member System complaint not involving a change in rate or rate design and to provide a full opportunity for a Member System to present its position on any issue to the Board of Directors.

ACCOUNTABILITY

The Board of Directors and the Chief Executive Officer.

SCOPE

This Policy applies to any Member System complaint about any policy, procedure, decision or other action, or failure to act of Tri-State. It shall not apply to any change in rate level or rate design.

Process


Step 1- Informal Complaint.

A Member System shall submit an Informal Complaint before submitting a Formal Complaint with Tri-State. An Informal Complaint may be submitted by a Member System Manager or board president of any Member System. It shall be made on the form attached to this Policy as Exhibit A and referred to the Chief Executive Officer of Tri-State or the Chief Executive Officer's designee. The Chief Executive Officer or designee shall attempt to resolve such Informal Complaint within the law, policies, rules and regulations of Tri-State, as soon as reasonably practicable. A decision on an Informal Complaint shall be made by the Chief Executive Officer on the form attached to this Policy within thirty (30) days after the submission of the Informal Complaint unless both parties agree that more time is needed.

If the Member System is not satisfied with the resolution offered by the Chief Executive Officer, the Member System may submit a Formal Complaint.

Step 2- Formal Complaint

A Formal Complaint may be submitted by the Member System board of directors. The Member System board of directors shall adopt a resolution authorizing the submittal of a Formal Complaint. Prior to the adoption of any such resolution, the Member System

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|  , Chairman and President | Date: 9-6-18 |
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Board of Directors Policy

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| Subject: NON-RATE DISPUTE RESOLUTION POLICY | | | Policy No.: 316 |
| Original Issue: 9-4-14 | Last Revised: 9-6-18 | Last Reviewed: 9-6-18 | Page 2 of 6 |

board of directors shall provide representatives of Tri-State a reasonable opportunity to appear before the Member System board of directors to present Tri-State's position on the issue.

The Formal Complaint shall be made on the form attached to this Policy as Exhibit B and shall be sent to both the Chairman and President and to the Chief Executive Officer of Tri-State.

The Board of Directors reserves the right to dismiss a Formal Complaint that is repetitive or has been previously decided.

The Formal Complaint shall be added to the agenda for the next regularly scheduled meeting of the Board of Directors. The Board of Directors shall set a date for consideration of the Formal Complaint at the earliest practicable time. The Board of Directors shall also determine who should consider the Formal Complaint.

Tri-State shall give written notice of the time and place where the Formal Complaint will be considered by mailing a copy of the notice at least ten (10) days before the first day scheduled for consideration, unless shortened by the presiding officer, to (1) the Member System filing the Formal Complaint, and (2) any other Member System which has asked to receive notice of the hearing. Alternatively, the notice may be sent electronically.

The Formal Complaint shall be considered by the Board of Directors, or by the Executive Committee, or by one or more individual Directors or any other person(s) designated by the Board of Directors. Whenever the Formal Complaint is considered by the Board of Directors, the Chairman and President of the Board of Directors shall preside. The Formal Complaint shall be considered at the headquarters building of Tri-State or such place as may be considered appropriate by the Board of Directors. The consideration shall be open to all Member Systems.

A Formal Complaint may be withdrawn by the Member System at any time, and it shall be deemed withdrawn where it has been set for consideration and the Member System fails to appear at the time, place and date set.

The Board of Directors or its designees shall establish such procedures as it deems appropriate for the Complaining Member System to present its position to the Board of Directors or its designees. The Chairman and President or other presiding officer shall conduct the proceeding consistent with Board policies and in such a fashion as to

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|  Chairman and President | Date: <u>9-6-18</u> |
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Board of Directors Policy

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promote the full exchange of ideas and opinions so that the Board of Directors or its designees will be fully informed prior to making a decision on the Complaint.

The Complaining Member System shall be permitted to make presentations and argument to the Board of Directors or its designees on all relevant matters through any designated representative, including without limitation, its Member System Manager, an independent consultant employed by the Member System, or its legal counsel. Other Member Systems may also comment or make such presentations and argument. The Board of Directors or its designees shall also consider presentation from Tri-State staff. Information considered shall be made available to any Member System upon written request; provided however, that the Board of Directors may (i) decline to provide confidential information in accordance with Tri-State Board Policy No. 406, and (ii) require appropriate non-disclosure agreements be executed by the Member System and its representatives prior to releasing such information.

At the conclusion of the presentations, the presiding officer may request oral or written statements of position prior to rendering a decision.


The Board of Directors or its designee shall proceed with reasonable dispatch to decide the matter presented. The decision shall be in writing and include a statement of findings and conclusions. The decision will be issued as soon as practicable and in any event within forty-five (45) days after the presentations have concluded.

The decision shall be delivered to the Complaining Member System and Tri-State by electronic mail and by first-class mail or private delivery service to the Complaining Member System, and shall be effective on the date mailed or such later date as stated in the decision.

Step 3-Appeal

If either the Complaining Member System or Tri-State staff objects to the decision, they may file a written objection with the Secretary of the Board of Directors stating their objection and the basis of the objection. Such objection shall fully and completely state the factual and legal grounds for the objection and shall be submitted not later than thirty (30) days after the date of the decision.

The Board of Directors shall forthwith refer any objection to the Executive Committee if the decision was rendered by the Board of Directors, or to the Board of Directors if the decision was rendered by the Executive Committee or other designee. The Executive

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|  , Chairman and President | Date: <u>9-6-18</u> |
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Board of Directors Policy

Committee or the Board of Directors, as the case may be, shall review the appeal within fifty (50) days after the date of the decision. Any Member System or Tri-State staff shall be permitted to address the Executive Committee or Board of Directors through its designated representative. If the decision is appealed to the Board of Directors, the Board of Directors decision shall be final. If the decision is appealed to the Executive Committee, the Executive Committee shall make a recommendation to the Board of Directors for final resolution. The Board of Directors shall consider the recommendation of the Executive Committee at the next regular Board of Directors meeting and the Board of Directors' decision at that meeting shall be final.

No Member System may make a complaint to any utility regulatory body or to any agency or court about any matter within the scope of this Policy without first following the procedures and exhausting the remedies as set forth in this Policy.

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316



TRI-STATE
Generation and Transmission
Association, Inc.

Board of Directors Policy

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| Subject: NON-RATE DISPUTE RESOLUTION POLICY | | | Policy No.: 316 |
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EXHIBIT A to Tri-State Board Policy NO. 316 INFORMAL COMPLAINT FORM

Member System: _____ Date: _____

Mailing Address: _____


Name (Manager or Board President): _____

Contact Telephone: _____ Contact Email: _____

Nature of Complaint - Use this section to describe the nature of your complaint. Describe the events in the order of occurrence. Please submit any and all supporting documents with the completed form.

Statement of Remedial Action Desired - Use this section to indicate what actions you would like to see taken to solve the problem.

Resolution - Decision of Chief Executive Officer will be rendered within thirty (30) days or as agreed.

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|  _____, Chairman and President | Date: 9-6-18 |
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TRI-STATE
Generation and Transmission
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Board of Directors Policy

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EXHIBIT B to Tri-State Board Policy No. 316

FORMAL COMPLAINT FORM

Subject Matter of Complaint: _____

Member System: _____ Date: _____

Mailing Address: _____

Contact: _____ Telephone: _____ Email: _____

Date of Board Resolution authorizing Formal Complaint: _____

(Board Resolution must be attached to this Form.)


This matter has been addressed through the Informal Complaint Process: Yes _____ No _____

Tri-State Representatives have appeared before Member System board regarding the subject matter of this Complaint ___Yes___ ___No___ Date(s) of appearance: _____

Complaint – Explain fully and clearly the details of the complaint. (Attach additional pages if necessary and any supporting documentation.)

Relief Requested – State clearly the exact relief desired. (Attach additional pages if necessary.)

Completed form must be sent to the Chairman and President and the Chief Executive Officer of Tri-State. Notice will be provided to you not less than ten (10) days before the date of consideration of this Formal Complaint by the Board of Directors or its designee, unless shortened by the presiding officer.

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|  _____, Chairman and President | Date: 9-6-18 _____ |
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Attachment D

Board of Directors Policy No. 406 (Requests for Tri-State Information)



TRI-STATE
Generation and Transmission
Association, Inc.

Board of Directors Policy

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|---|----------------------|-----------------------|-----------------|
| Subject: REQUESTS FOR TRI-STATE INFORMATION | | | Policy No.: 406 |
| Original Issue : 7-7-00 | Last Revised: 3-6-19 | Last Reviewed: 3-6-19 | Page 1 of 7 |

OBJECTIVE

To establish procedures for the determination of requests made to Tri-State for the furnishing of information or documentation.

ACCOUNTABILITY

It is the responsibility of the Chief Executive Officer and his staff to implement the terms of this policy in consultation with the General Counsel, except as hereinafter provided. It is the responsibility of the Board of Directors to implement this policy when information or documentation requests are submitted to the Board for its consideration and decision as provided for herein, in consultation with the General Counsel.

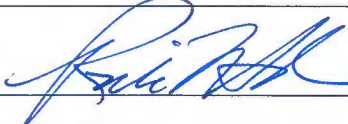
SCOPE

The Chief Executive Officer, and employees designated by him/her, shall have the authority to provide Routine Information, to those Persons or firms requesting such information. All other information or documentation, shall be considered Restricted Information, and requests for the same shall be acted upon individually by the Board of Directors, following advice of legal counsel. Generally, only a Member System shall be eligible to receive Restricted Information, and then only as provided in this Policy. Tri-State's response to all requests for information shall be governed by the rules and procedures set forth herein. "Person" as used in this Policy shall mean a person, firm, corporation, partnership, association, or legal entity of whatever kind or type, other than a Director or the Board of Directors.

A. Routine Information

The following information, routinely utilized by Tri-State in conducting its business, shall be available upon request; provided, however, that Tri-State may require the requesting Person to pay the cost of reproducing any information or material, which is not regularly available for public or Member System distribution.

- Wholesale electric rate schedules
- Articles of Incorporation and Bylaws
- Published policies adopted by the Board of Directors
- Pamphlets, brochures and similar material
- Technical engineering and operating data relating to Tri-State's system
- Anything required to be released by any applicable law or governmental order

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|  _____, Chairman and President | Date: 3-6-19 |
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TRI-STATE
Generation and Transmission
Association, Inc.


Board of Directors Policy

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- Annual Reports, Quarterly Financial Reports and monthly financial reports (RUS Form 12a only)

B. *Restricted Information; Disclosure Requiring Board of Directors Action*

1. All requests for non-Routine Information, including any information where there is a legal requirement that it be kept confidential, shall be made in writing on the "Restricted Information or Documentation Request Form" attached hereto as Exhibit A and made a part of this Policy. Such requests shall be handled in the manner set forth in this Section B.
2. Any Person whose request for Restricted Information is granted, in whole or in part, shall be required to pay all of Tri-State's costs reasonably incurred in making such information available. Payment shall be made at or before the time such information is made available.
3. The executed Exhibit A, "Restricted Information or Documentation Request Form," shall be forwarded to Tri-State's General Counsel for an opinion as to whether the request has been made for a proper purpose materially germane to the requesting Person's status and interests in Tri-State. The executed request, the opinion of the General Counsel, and other information pertinent to said request, shall be considered by the Board of Directors as soon as reasonably necessary but not later than at its next regular Board of Directors meeting. If the Board of Directors approves the release of the requested information, the Chief Executive Officer shall prescribe the time and manner for making such information available during normal business hours to the requesting Person. If the Board of Directors determines that the request has not been made for a proper purpose, the request shall be denied.
4. Board of Directors, committee and staff meeting minutes will not be furnished as a whole to a requesting Person; rather, upon Board of Directors' approval Tri-State will research and furnish a copy of excerpts that contain or substantially relate to the information sought. No portion of such minutes shall be made available if it contains matter of a confidential nature, the release of which might subject Tri-State to unwarranted claims or litigation or might invade the privacy of any Person. Without regard to the action that has been or may be taken in response thereto, the Chief Executive Officer shall report at each meeting of the Board of Directors with respect to any information requests received since the last such report.

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|  _____, Chairman and President | Date: 3-6-19 |
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5. Board of Directors, committee and staff minutes as a whole may be furnished on a continuing basis to such organizations and persons with which Tri-State has an ongoing business relationship with Board of Directors' approval; but each such organization and person shall be informed of the provisions of this Policy and requested to withhold the furnishing of any such minutes to any other organization or person without the prior written consent of Tri-State or a court order authorizing such furnishing, except to the extent that the furnishing thereof is required by any applicable federal, state or local law

C. *Restricted Information; Disclosure Requiring Court Order*

1. The following information will not be furnished except pursuant to a court order:
- (a) Board of Directors meeting minutes or the minutes of any Board of Directors committee meeting or staff committee meeting for disclosure to Persons beyond those otherwise authorized by the Board of Directors pursuant to Sections B. 4. and 5. above; or
 - (b) Hourly wages or salaries and fringe benefits of individual employees or employee groups less than four; or
 - (c) Any employee's personnel file or records, or any file or records of other persons if such would, in the opinion of the General Counsel, constitute an invasion of privacy; or
 - (d) Any information which, in the opinion of the General Counsel, constitutes a trade secret, process, program, trademark, or relates to fuel prices, or other legally protected confidential information or thing owned or protected in confidentiality by contract; or
 - (e) Information, documentation, or privileged communication between Tri-State and its legal counsel concerning pending or threatened claims or litigation against Tri-State, its employees and agents; or
 - (f) Any information provided to Tri-State by a Member System which the Member System has designated as confidential, including, but not limited to, analyses or data related to Member System billings, loads, and forecasts; provided that Tri-State may release such information without requiring a court order upon written authorization of the Member System that supplied the information; or

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|  _____, Chairman and President | Date: 3-6-19 |
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TRI-STATE
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Board of Directors Policy

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- (g) Any other information or documentation determined by Tri-State to be Restricted Information and requiring a court order for disclosure.

D. *Restricted Information; Disclosure Requiring Member System Approval*

If a request submitted by a Member System involves or pertains to Restricted Information of or pertaining to one or more other Member Systems, such information shall not be disclosed except upon Tri-State's receipt of written authorization from all Member Systems involved.

E. *Information Authorized By Employee*

Nothing in this Policy shall prevent an employee from authorizing the release of information from an employee's personnel file or record to a creditor or other Person. All such authorizations shall be executed in writing, by the relevant employee, on forms prescribed by Tri-State.

F. *Press Releases*

All press releases shall be made by either the Chairman and President or the Chief Executive Officer of Tri-State or by their designee. All necessary steps shall be taken to maintain amicable relations with the press and other information dispersing agencies in order that the public may receive information concerning Tri-State operations.

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|  _____, Chairman and President | Date: 3-6-19 |
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TRI-STATE
Generation and Transmission
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Board of Directors Policy

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EXHIBIT A to Tri-State Board Policy No. 406

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.
Westminster, Colorado

RESTRICTED INFORMATION OR DOCUMENTATION REQUEST FORM

NOTE: No information or documentation concerning Tri-State, its Member Systems, personnel, directors, agents, employees or operations shall be made available (except for Routine Information covered in Tri-State Board Policy No. 406) unless the requesting Person satisfactorily fills out and executes this form, and unless the Board of Directors authorizes the requested information or documentation to be made available to the Person requesting the same.


REQUESTING PERSON'S IDENTIFICATION:

Name: _____ Telephone: _____

Address: _____
Street

City/State/Zip: _____

STATE *SPECIFICALLY* WHAT INFORMATION OR DOCUMENTATION IS BEING REQUESTED:

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|  _____, Chairman and President | Date: 3-6-19 |
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EXHIBIT A to Tri-State Board Policy No. 406, continued

STATE ***SPECIFICALLY*** WHY YOU WANT SUCH INFORMATION OR DOCUMENTATION AND FOR WHAT USE AND PURPOSE SAID INFORMATION OR DOCUMENTATION IS INTENDED AND WILL BE USED:


IF THIS REQUEST IS MADE ON BEHALF OF ANOTHER PERSON OR PERSONS OTHER THAN YOURSELF OR ON BEHALF OF, OR IN THE NAME OF, ANOTHER PERSON, FIRM, CORPORATION OR ASSOCIATION, PLEASE ATTACH AN ADDITIONAL PAGE STATING THE NAMES, BUSINESS, ADDRESSES, AND TELEPHONE NUMBERS OF SUCH PERSON(S), FIRM(S), OR ASSOCIATION(S).

IF YOU ARE REPRESENTED BY AN ATTORNEY AT LAW IN MAKING THIS REQUEST, PLEASE STATE SUCH ATTORNEY'S NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER:

IT IS UNDERSTOOD AND AGREED THAT THE UNDERSIGNED WILL NOT USE, OR PERMIT OTHERS TO USE, THE REQUESTED INFORMATION OR DOCUMENTATION FOR A USE OR PURPOSE OTHER THAN THAT ABOVE STATED. IT IS ALSO UNDERSTOOD THAT THE UNDERSIGNED WILL BE CHARGED FOR TRI-STATE'S COSTS ACTUALLY INCURRED IN MAKING SUCH INFORMATION OR DOCUMENTATION AVAILABLE, AND IT IS HEREBY AGREED THAT THE UNDERSIGNED WILL PAY ALL SUCH COSTS, AS DETERMINED BY TRI-STATE, AT THE TIME THE INFORMATION OR DOCUMENTATION IS PROVIDED.

Date: _____

(Signature) _____

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|  _____, Chairman and President | Date: 3-6-19 |
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EXHIBIT A to Tri-State Board Policy NO. 406, continued


ACTION TAKEN

DATE: _____

SIGNED: _____

Title

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|--|--------------|
|  _____, Chairman and President | Date: 3-6-19 |
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 23rd day of August, 2019.

/s/ Laura V. Swett#

Laura V. Swett

Steptoe & Johnson LLP

1330 Connecticut Avenue, NW

Washington, DC 20036

202-429-8016

lszett@steptoe.com

Document Content(s)

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